IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

CRP.No. 324 of 2006(I)

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AGAINST THE ORDER DATED 31/01/2006 IN IA.1054/05 IN IA.652/05 IN AS.31/2001 of SUB COURT, HOSDURG

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REVN. PETITIONER: PETITIONERS/APPELLANT/DEFENDANT

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1. RADHAMANI, D/O. NARAYANI,
   RESIDING AT PALAKKAL, KODOTH VILLAGE,
   HOSDURG TALUK, KASARAGOD DIST.

2. BABU S/O. GEORGE,
   RESIDING AT DO. DO.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS: DEFENDANT/PLAINTIFF

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BAYAKKODAN VEETTIL MADHAVI,
D/O. MALINGAN, RESIDING AT ATHRUKAYAM,
PULLUR VILLAGE, HOSDURG TALUK,
KASARAGOD DIST.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.SASIDHARAN NAMBIAR,J.**

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**C.R.P.NO. 324 OF 2006**

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**DATED THIS THE 17th DAY OF NOVEMBER, 2006**

**ORDER**

Petitioners are appellants in A.S.31/01 on the file of Sub Court, Hosdurg. The appeal was dismissed for default on 23.8.05, as the Counsel was absent and there was no representation. Petitioners filed I.A. 652/06, an application under Order XLI Rule 19 of C.P.C. to restore the appeal and to dispose it on merits. Though respondent did not file any objection as per order dated 9.11.05, learned Sub Judge dismissed the application. Petitioners thereafter filed I.A.1054/05, an application under Order XLVII Rule 1 to review the earlier order contending that there is sufficient reason for their absence and as the appeal was dismissed for default in the interest of justice, the order is to be reviewed. As per order dated 31.1.06 that petition was also dismissed. It is challenged in this petition filed under Section 115 of C.P.C Though notice was served on the respondent, she did not appear.

2. Learned Counsel appearing for petitioners were heard.

3. The appeal was admittedly dismissed for default. Order XLI Rule 19 of C.P.C. enables an appellant, when an appeal was dismissed for his absence, to get the appeal re-admitted if he was prevented by any sufficient cause from appearing, when the appeal was called on for hearing. Petitioners filed an application to re-admit the appeal and to dispose the appeal on merit. Eventhough no objection was filed by respondent, learned Munsiff dismissed the application. Inspite of filing a review petition, Court below did not grant an opportunity to the petitioners to have a decision in the appeal on merits. Unfortunately, Court below omitted to note that a party is not expected to be present no Court on a day posted for hearing of the appeal. If at all, the negligence for the failure to represent the party on the posting day is that of his counsel. It is not all proper or legal to penalise the party for the negligence or latches of the counsel. Ordinarily no party or counsel will wilfully remain absent when an appeal is posted for hearing. A Court is for dispensing justice. An opportunity to have a decision on merits should not have been denied to a party on hypertechnical reasons ignoring the need to do justice.

Considering the facts of the case, it is clear that

learned Sub Judge should have disposed the appeal on merits when the petitioner filed application seeking re-admission of the appeal the orders passed by learned Sub Judge dismissing the application filed for re-admitting the appeal is set aside. A.S.31/01 is restored to file. Learned Sub Judge is directed to dispose the appeal on merits expeditiously.

**M.SASIDHARAN NAMBIAR,JUDGE**

Acd